SHASHITHARAN PILLAY A/L BASKARAN PILLAY

v.

SALLEH BIN HUSSIN & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD. GHAZALI BIN MOHD. YUSOFF J
[CIVIL SUIT NO. 22-349-1993]
27 JUNE 1995

INJUNCTION: *Magistrates' Court issuing order to demolish unauthorized building - Plaintiff filing writ and making application to restrain demolition of building - Whether plaintiff entitled to injunction - Principles applicable - Whether plaintiff has satisfied the prerequisites for the grant of an interlocutory injunction - Whether there was a bona fide serious issue to be tried - Consideration of s. 54 Specific Relief Act 1950 - Whether grant of injunction would amount to a stay of proceedings in a criminal matter.*

The second defendant issued a summons against the first defendant for the erection of an unauthorized building contrary to s. 70(l) of the Street, Drainage and Building Act 1974. The learned Magistrate ordered the said unauthorized building to be demolished. The said unauthorized building was a temple. The plaintiff filed a writ seeking various remedies and at the same time filed an application to restrain the defendants from demolishing the building.

The question that arose was whether the plaintiff was entitled to the reliefs sought.

Held:

[1] Section 54(e) of the Specific Relief Act 1950 provides that an injunction cannot be granted to stay proceedings in any criminal matter. The order to demolish the said unauthorized building arose out of a criminal matter and forms part of the proceedings. It is an order which has to be executed and up to today it still stands. To allow the plaintiff's application for an interlocutory injunction, the effect of which would be to prevent the demolition order from being executed by either defendant, would clearly amount to a stay of proceedings in a criminal matter and is thus contrary to the provisions of s. 54(e) of the Specific Relief Act 1950.

[2] The plaintiff's conduct in taking almost six months to write a letter to the relevant authority to make an application for land to resite the temple clearly shows that the plaintiff was not serious in wanting to settle the matter amicably. In the circumstances, and applying the provisions of s. 54(j) of the Specific Relief Act, the plaintiff's conduct has been such as to disentitle him to the assistance of the Court.

[3] From the materials adduced it is clear that neither defendant is contending that the plaintiff is not entitled to retain the temple. In fact the second defendant had given the plaintiff six months to remove the temple. In these circumstances the question whether or not the plaintiff is entitled to retain the temple is not in issue and cannot at all amount to a serious question which needs to be tried.

[4] The plaintiff's contention that, as nobody has challenged the existence of the building, he has an inherent right in its existence, is without basis. Section 341 of the National Land Code provides that adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any person or body entitled to an interest therein, and accordingly, the

Limitation Ordinance 1953 shall in no circumstances operate to extinguish any title to, or interest in land. In the face of this provision and looking at the totality of the facts, the plaintiff's case discloses no cause of action.

[5] Furthermore, the second defendant is a public authority with a duty to perform and it is settled law that such a body should not be restrained by interlocutory injunction from exercising its statutory powers unless the plaintiff has shown a real prospect of success in his claim for a permanent injunction at the final hearing. In the circumstances of the present case it would not be a proper exercise of judicial discretion for the Court to restrain the defendants from carrying out the demolition order.

[Application for injunction dismissed with costs].

Cases referred to:

American Cyanamid Co v. Ethicon Ltd. [1975] 2 WLR 316 ***(refd)***

Alor Janggus Soon Seng Trading Sdn. Bhd. & 6 Ors. v. Sey Hoe Sdn. Bhd. & 2 Ors. [1995] 1 AMR 549 ***(refd)***

Keet Gerald Francis Noel John v. Mohd. Noor @ Harun bin Abdullah [1995]1 AMR 373 ***(refd)***

RCA Sdn. Bhd. v. Pekerja-Pekerja RCA Sdn. Bhd. & Ors. [1991] 1 MLJ 309 ***(refd)***

Ledchumanan Nagappan v. Nadarajah & 2 Ors. [1993] 4 CLJ 253 ***(foll)***

Saw Seng Kee v. Director of Lands & Mines, Penang & Ors. [1987] 1 MLJ 80 ***(foll)***

Legislation referred to:

Limitation Ordinance 1953
National Land Codes, ss. 2, 341
Rules of the High Court, O. 41 r. 5
Specific Relief Act 1950, s. 54, (e), (j)
Street, Drainage and Building Act 1974, ss. 70(l), (13)(c), (15), (17)(b), 72

For the plaintiff - Komalan Vijayan; M/s. Komalan & Co.
For the 1st defendant - Ibrahim bin Hashim; M/s. Hassan Ibrahim & Co.
For the 2nd defendant - Lokman bin Yusof; M/s. Khaled & Zainuddin

JUDGMENT

Mohd. Ghazali Bin Mohd. Yusoff J:

The plaintiff to this action has filed an application made by way of summons-in-chambers for an order for to restrain either or both the defendants or their agents or servants from carrying out an order for the demolition of an unauthorised building made by the Magistrate Court Johor Bahru, against the first defendant on 7 November 1992 vide Summons Case No. C 87-786-92.

The background to this application is as follows:

The plaintiff is the son of one Baskaran Pillay and the latter is residing in a rented house known as No. 13A, Jalan Ngee Heng (Lorong 2), Johor Bahru. Adjacent to this house is a building, which is sited on a piece of land known as Lot 4271, No. Pendaftaran 26977, District of Johor Bahru measuring approximately 27 acres, 0 roods and 20 poles (hereafter referred to as "the said land"). The said building, which houses a temple, occupies an area measuring about 10,000 square feet on the said land. The first defendant is one of several claimants to the said land and second defendant is the local authority for the district of Johor Bahru.

Prior to 13 January 1981, the said land was registered in the name of 'The Estate and Trust Agencies (1927) Ltd." as trustees. On 13 January 1981, in pursuance to a Court order (OS No. 134 of 1973), the land was registered in the names of Syed Mohamed bin ldroos Alattas, Dato Ungku Mohsin bin Mohamed Alattas, Syed Ali bin Mohamed Alattas and Syed Hussein bin Salim Alattas as trustees of the estate of one Syed Hassan bin Ahmad Alattas. Subsequently on 6 May 1981, in pursuance to a deed of trust, the whole of the said land was registered in the names of Syed Hussein bin Salim Alattas, Syed Salleh bin Abdul Rahman Alattas, Syed Abdul Kadir bin Mohd Alattas and Syed Mohd Zain Alattas as the now trustees of the estate of the said Syed Hassan bin Ahmad Alattas.

According to the plaintiff's affidavit in support of the application, sometime between 1968 and 1969 the said Baskaran Pillay, on behalf of a group of devotees belonging to the Hindu religion, approached one Hussin bin Salleh, now deceased, who was the rent-collector for the said house where he is residing, and requested the latter's permission to erect a building to house a temple on that portion of the said land adjacent to the said house. The plaintiff states in his affidavit that he "guess" that the said Hussin bin Salleh was the representative of the then registered landowners ("beliau diagak mewakili tuan-tuan tanah tersebut"), namely, "Estate and Trust Agencies (1927) Ltd." He then claims that, the said group of devotees gave a sum of RM1,000 to the said Baskaran Pillay to be transmitted, to the said Hussin bin Salleh and forthwith erected a building to house the temple. In 1988, as the said building was in a dilapidated condition, the plaintiff stated that he and a group of devotess reconstructed and extended the built-up area of the building with some assistance from a political party, a member of the Johor State Legislative Assembly and the district office, Johor Bahru.

However, in 1989, a summons (No. C 87-123-89) was issued against the said Baskaran Pillay at the behest of the second defendant for an offence of erecting an unauthorised building contrary to s. 70(l) of the Street, Drainage and Building Act 1974 (hereafter referred to as "the said Act") and punishable under s. 70(13)(c) of the said Act. Section 70(l) of the said Act provides that no person shall erect any building without the prior written permission of the local authority. The said Baskaran Pillay was eventually acquitted as the prosecution could not prove that he was responsible for the erection of the said unauthorised building.

In 1992 the second defendant preferred a similar charge against the first defendant vide Summons Case No. C 87-786-92 in the Magistrate Court, Johor Bahru. On 7 November 1992, the first defendant pleaded guilty to the charge and was convicted and on the application of the prosecution, the Magistrate made an order pursuant to s. 70(15) of the said Act, directing the first defendant to demolish the said unauthorised building. Section 70(15) reads:

> A Magistrate shall, on the application of the local authority or of a public officer authorised by the local authority in writing in that behalf, make a mandatory order requiring any person convicted of an offence under the provisions of subsection (13) to alter in any way or demolish the building.

As the first defendant was not in a position to demolish the said unauthorised building due to financial constraint and also fear for his safety, he requested the second defendant to undertake the demolition works to which the second defendant agreed upon payment for services to be rendered for the said works. Upon being informed of the said demolition order, the plaintiff together with some devotees approached the second defendant requesting for a stay of execution of the demolition order on the ground that they needed time to

remove the temple to another location. The second defendant agreed to a six months reprieve but at the end of that period, nothing materialized. Subsequently the second defendant issued a notice, pursuant to s. 72 of the said Act to the occupants of the said unauthorised building giving them thirty days to vacate so as to enable the second defendant to execute the demolition order made by the Magistrate Court.

On 14 September 1992, the plaintiff filed a writ against the defendants praying for the following orders, namely:

(a) an order that the plaintiff is entitled to retain the temple;

(b) an order that either or both the defendants or their agents or servants be restrained from carrying out the demolition order;

(c) damages;

(d) costs; and

(e) any other relief as the Court deems fit.

On the same day the plaintiff filed this application which is the subject-matter of this judgment. Although the application is not worded as such, it is clear that the plaintiff is applying for an interlocutory injunction to restrain the defendants from enforcing the order for the demolition of the said unauthorised building made by the Magistrate Court on 7 November 1992.

In his submission, Counsel for the first defendant argued that the application should be dismissed as the relief sought is vague and that it is not clearly stated that the plaintiff is applying for an interlocutory injunction and that the word "injunction" is not even mentioned in the writ nor in the application. It is my view that although the application is not worded as such, I do not think any of the defendants have been misled or was confused by the wordings used in the application. The plaintiff is seeking an order from this Court to restrain either or both the defendants from executing an order for demolition, made by the Magistrate Court, of the said unauthorised building and the words "to restrain" clearly denotes that the plaintiff is seeking an interlocutory injunction for a stay of that order. I will now determine whether this application should be allowed.

Counsel for the plaintiff submitted that the plaintiff brings this action because he is an interested party, namely:

(i) as a devotee of the temple; and

(ii) as a member of the committee for the temple.

She argued that the said building has existed on the said land prior to 1968 and that it was reconstructed in I968/1969 and again in 1988. She contended that in 1968 the said Baskaran Pillay obtained the oral consent of the said Hussin bin Salleh, deceased, i.e., the rent-collector, who has held himself out to be the representative of the registered owner of the said land. She argued that the plaintiff, as a devotee of the temple, has an inherent right in the existence of the said building, and that if the demolition order is carried out, his right is affected and no compensation can be made by way of damages.

She further argued that the interest, of the first defendant has been overtaken by events, namely, that the said land has been sold to new purchasers and that the devotees, who have formed a committee to look into the matter, have been conducting negotiations with the new owners to settle the matter amicably. She submitted that even if the first defendant establishes his interest in the land, his rights are not affected in any way by the existence of the said building as his rights are now only to the proceeds of sale of the said land.

To support her arguments, she referred to the case of *American Cyanamid Co. v. Ethicon Ltd.* [1975] 2 WLR 316 which she submitted laid down the test to be applied in the granting of an interlocutory injunction, namely, whether there is a serious question to be tried and whether the balances of convenience lies in granting or refusing the injunction. She argued that damages would be totally inadequate to the plaintiff as the building will be demolished and that on the other hand, the first defendant can be adequately compensated by damages if the matter is litigated in his favour and that the second defendant suffers no loss at all either way. As such she urged the Court that the plaintiff be granted the interlocutory injunction on the usual undertaking as to damages and that the defendants be ordered to pay costs of the application.

In his affidavit in reply. the first defendant states that the said Hussin bin Salleh, deceased, who was his father, had bought an interest in the said land on 25 April 1945. He contended that neither he nor his father, who died on 4 August 1979, has given permission to anyone to build the said unauthorised building and that it was constructed without their consent. He also stated that his late father did not receive any money from anyone in return for permission to construct the said building. He contended that vide an order made by the High Court in Malaya at Johor Bahru (OS No. 31-606-87). On 4 April 1988, it was ordered that he is to continue to act as sole administrator of the estate of his late father and be at liberty to distribute and transfer all the deceased's immovable property which includes the deceased's interest in the said land. He states that he had pleaded guilty to the charge preferred by the second defendant against him as he has an interest in the land and agreed that the said building is an unauthorised building.

The second defendant contended that the said unauthorised building was erected without its prior permission which makes it an offence under s. 70 of the said Street, Drainage and Building Act. Section 70(1) provides "No person shall erect any building without the prior written permission of the local authority" and s. 70(13)(c) reads "Any person who - (c) erects a building in contravention of this Act or of any of the by-laws made thereunder; ... shall be liable on conviction to a fine not exceeding ten thousand ringgit and shall also be liable to a further fine of two hundred and fifty ringgit for every day during which the offence is continuing after conviction".

The second defendant then contended that since the Magistrate Court had acquitted the said Baskaran Pi1lay of the charge on the ground that there was no evidence that he had constructed the said unauthorised building, the second defendant subsequently preferred a similar charge against the first defendant since documentary evidence showed that he had an interest in the said land and had been paying its quit rent since 1988 and had even settled the arrears of the quit rent long overdue since 1977.

The second defendant also contended that despite granting the plaintiff, on 1 February 1993 upon the latter's request, a six months reprieve to enable him to find another site to remove the temple, the plaintiff has failed to vacate the said unauthorised building even after a lapse of one year since that date. The second defendant stated that the plaintiff only applied for an extension of time to remove the temple by a letter dated 30 June 1993. It also contended that the plaintiff only made an attempt to look for another location to site the temple in July 1993 when he made an application for state land by a letter dated 22 July 1993 addressed to the land office, Johor Bahru. The second defendant contended that it had turned down the plaintiffs application for extension for time to remove the temple and since then had issued a notice under the said Act ordering the occupants to surrender vacant possession of the said building within 30 days from the date of the notice but up to now, they had failed to do so.

I think the prerequisites which must be present before a Court can determine whether an interlocutory injunction should lie has been adequately dealt with by our Courts in several decided cases. In *Alor Janggus Soon Seng Trading Sdn. Bhd. & 6 Ors. v. Sey Hoe Sdn. Bhd. & 2 Ors.* [1995] 1 AMR 549, Mohd Jemuri Serjan CJ (Borneo), said (at page 568)

> Firstly, the plaintiffs' case must raise serious issues to be tried. If the plaintiffs fail at that point there is clearly no case for an injunction. Secondly, the trial of the main suit is likely to take place in the sense that the plaintiffs' case shows that they are genuinely concerned to pursue the claim to trial and they are seeking the injunction as a means of holding operation pending the trial. Once it can he established that there are serious issues to be tried then the other guidelines must be invoked. The Court has to consider:
>
> (a) Whether damages are an adequate remedy,
>
> (b) Where does the "balance of convenience" lie;
>
> (c) Are there any "special factors".

In the *American Cyanamid* case (referred to earlier) Lord Diplock took the view that there is a serious question to be tried if a claim is not frivolous or vexatious. In *Keet Gerald Francis Noel John v. Mohd @ Harun bin Abdullah & 2 Ors.* [1995]1 AMR 373, the Court of Appeal stated that if a Judge hearing an application for an interlocutory application finds "upon a consideration of all the relevant materials before him, including submissions of Counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused". In *RCA Sdn. Bhd. v. Pekerja-Pekerja RCA Sdn. Bhd. & Ors.* [1991] 1 MLJ 309, the Court stated that an injunction will not be granted if there is no cause of action.

In considering the application before me I had kept in mind the above principles. The plaintiff is applying for an interlocutory injunction to restrain either or both the defendants from carrying out the order made by the Magistrate Court to demolish the said unauthorised building. Can such an application be legally sustainable? According to s. 54 of the Specific Relief Act 1950 "An injunction cannot be granted - (e) to stay proceedings in any criminal matter;". The order to demolish the said unauthorised building made by the Magistrate was directed against the first defendant. It arose out of a criminal matter, no doubt a summons case but nevertheless a criminal matter, and the said order forms part of the proceedings. It is an order which has to be executed and up to today it still stands. As provided for under s. 70(13) of the said Street, Drainage and Building Act, an offender can be fined up to RM10,000 and in addition to the imposition of a fine, "the Magistrate can order a person who is found guilty in such criminal proceedings, to demolish the building, being an unauthorised building s. 70(15)). If an offender against whom such an order has been made fails to do so, the Court may impose a fine of RM250 for every day during which the offence is continuing after conviction (s. 70(13)) until the unauthorised building is demolished.

The second defendant has preferred the charge against the first defendant on the ground that its records show that the letter has an interest in the said land; he has pleaded guilty to the charge and consequently the order to demolish the unauthorised building was made against him. As such, neither the plaintiff nor the said Baskaran Pillay has anything to do with the criminal proceedings instituted against the first defendant. The said charge can be preferred against any person who erects a building in contravention of the Act (s. 70(13)(c)) - he need not necessarily be the land owner). Consequently s. 70(17)(b) provides "Where a building is erected on vacant land and the person who actually erected the building is not known ... the building shall be deemed to have been erected by the owner of such land who shall be liable therefor".

In relation to the conviction of the first defendant, Counsel for the plaintiff argued that the first defendant did not erect the said building and thus should not have been charged with such an offence; furthermore, he is merely a claimant to the said land. With respect I cannot see how this argument can hold water. It is my view, that whether the first defendant is or is not the person responsible for erecting the said unauthorised building would for the purposes of this application be irrelevant and a non-issue. The second defendant had decided to prefer such a charge against the first defendant and that being the case, it is not open to this Court to inquire into the grounds for the second defendant's decision to prosecute the first defendant nor is it open to this Court to inquire into the merit of the exercise by the second defendant of its discretion. In other words, it would not be proper for this Court sitting as a civil Court to determine whether a person was wrongly charged or wrongly convicted with a criminal offence in a Magistrate Court and make a finding which would have the effect of reviewing or revising the conviction. That being the case, I cannot see how the plaintiff can overcome what is prohibited by s. 54(e) of the Specific Relief Act as laid down above. To allow the plaintiff's application for an interlocutory injunction, the effect of which would be to prevent the demolition order from being executed by either defendant, would clearly amount to stay of proceedings in a criminal matter and thus contrary to the said s. 54(e) of the Specific Relief Act. I would think that the application should be dismissed based upon this ground alone.

Notwithstanding the above, I am of the view that I still need to ask myself whether the totality of the facts presented before me discloses a *bona fide* serious issue to be tried. I have carefully considered the statement of claim and the plaintiff's affidavit and I cannot find any. The plaintiff has stated that he approached the second defendant for a stay of execution of the demolition order so as to allow him time to remove the temple to another location; he was granted a six months grace period commencing 1 February 1993. To me, this act on the part of the plaintiff, amounts to an admission that he has no interest in the said land neither is he claiming that he has an interest in the said land. However, this would seem to be in opposition to the first prayer to his statement of claim wherein he has requested for an order that he be entitled to retain the temple. I am of the view that although it is not worded so, I would think that the effect of that prayer would be similar to praying for an order that he is entitled to an equitable right to remain on that part of the said land. I say so because under s. 2 of the National Land Code, the word "land" is defined to include "all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface"; the said unauthorised building, which is used to house the temple, is attached to the earth, and for the plaintiff to pray for an order that he is entitled to retain the temple would clearly amount to praying for an order that he is entitled to retain the said building, the ultimate effect of which would be that he it entitled to an equitable right to remain on that part of the said land. Although he does not say so, that would definitely be the effect if such an order is granted whereas his actions and conduct, e.g., by requesting the second defendant for time to remove the temple and by requesting the second defendant to provide an alternative site, tends to show that he admits that he has no interest in that part of the said land and that he is not pursuing any claim that he has an equitable right to remain on that part of the said land.

I do not think that I should delve into the issue as to whether the second defendant is the proper authority to which the plaintiff may apply for a piece of land to resite the temple but nevertheless, when the plaintiff sought from the second defendant a stay of execution of the demolition order based upon the reason that he needed time to look for

another location to remove the temple, and was then given six months to do so, is there anything to show that he has actually made serious attempts to look for another site? The relevant material before me seems to show otherwise - his only serious attempt to look for another location, after his meeting with the second defendant, was made almost six months later when he made an application by a letter dated 22 July 1993 to the land office Johor Bahru for a piece of land to resite the temple.

Under such circumstances, I am of the view that the plaintiff's conduct tends to show that he is not seriously attempting, as he has claimed, to settle the matter amicably. His conduct is suspect. It took him almost six months to write a letter to the relevant authority to make an application for land. In relation to such a situation, s. 54(j) of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court. In this action, the plaintiff has given the impression that he is not claiming an equitable right to remain on the said land but is merely claiming that he is entitled to retain the temple. From the relevant material before me, it is clear that neither defendant is contending that the plaintiff is not entitled to retain the temple; the second defendant has given him six months to remove it. As such, the question that whether the plaintiff is entitled to retain the temple is certainly not in issue and cannot at all amount to a serious question which needs to be tried. I can only but deduce that the plaintiff has no cause of action but has filed this action and simultaneously this application in the hope that the relevant authorities will provide a new site. As such, I do not think that the plaintiff is coming to Court with clean hands and his conduct as discussed above would disentitle him to the assistance of the Court. In *Ledchumanan Nagappan v. Nadarajah & 2 Ors.* [1993] 4 CLJ 253 at page 258, the Judge said:

> It is well established in our law that he who comes for equity must come with clean hands. Even if the plaintiff had a cause of action, (and he has none in this case) all the reliefs sought are equitable reliefs in the discretion of this Court. By his own conduct the plaintiff has disentitled himself to relief on equitable principles."

The same would be applicable to the plaintiff in the instant case.

Counsel for the first defendant has also argued that the plaintiffs affidavit contain several vague and uncertain facts which he cannot prove. He submitted that the plaintiff states (in paragraph 2) that the contents of his affidavit is within his knowledge whereas it is clear from its contents - that his source of information, with regard to the origins of the temple, is based upon what has been told to him by the said Baskaran Pillay, e.g., in paragraph 4(d) of his affidavit he states that he "guess" ("beragak") that the said Hussin bin Salleh is representing the owners of the said land and he even claimed that the group of devotees paid the said Hussin bin Salleh a sum of RM1,000 through the said Baskaran Pillay. Counsel argued that the plaintiff has not shown how these facts has come "within his knowledge". I would tend to agree with Counsel. From my reading at the plaintiff's affidavit, I am of the view that its contents are merely based upon hearsay and therefore wholly insufficient. Order 41 r. 5 of the Rules of the High Court provides:

> (1) ... an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

I am of the view that the plaintiff is not able of his own knowledge to prove the facts contained therein. He is not certain as to the role played by the said Hussin bin Salleh and has clearly stated that he is making a "guess". The contents of the affidavit do not at all show that he is able of his own knowledge to prove that the earlier building was

erected with to consent of the landowners of the said land and that Hussin bin Salleh was a representative of the landowners. The only fact that he may be able of his own knowledge prove is that he was the prime-mover in the reconstruction of the said building in 1988.

Another point of contention raised by the plaintiff is that, after its construction in 1988, the said building was allowed to stand without any interference from either the landowners or the authorities and nobody has questioned its existence. I cannot see the relevance of this contention. It is clear from the facts contained in the plaintiff's affidavit that this newly reconstructed and extended building was erected in 1988 without the written permission of the second defendant and thus in contravention of the said Street, Drainage and Building Act, it is an unauthorised building. The plaintiff's contention that it was built with the assistance from a political party, a member of the state legislative assembly and also the district office is irelevant and immaterial and has no bearing upon the action or this application; such assistance cannot at all make the building an authorised building under the provisions of the Street, Drainage and Building Act. Furthermore, the plaintiff has impliedly admitted in his affidavit that the said building was reconstructed in 1988 without the consent of the owners of the said land, *viz*., in paragraphs 5 and 6 of his affidavit he states that he and some devotees took their own initiative to reconstruct and extend the said building since neither he nor the said Baskaran Pillay could contact the land owners to discuss the matter as the said Hussin bin Salleh has since passed away. That being so, I cannot see how the contention of Counsel for the plaintiff that the latter has an inherent right in its existence can hold water. The fact that nobody has challenged the existence of the said unauthorised building is irrelevant. Section 341 of the National Land Code provides:

> Adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any person or body entitled to an interest therein, and accordingly, the Limitation Ordinance 1953, shall in no circumstances operate to extinguish any title to, or interest in, land.

In the face of this provision and looking at the totality of the facts before me, it is my finding that the plaintiff's case discloses no cause of action. There is no basis for him to apply for an interlocutory injunction to restrain the defendants from carrying out the order to demolish made by the Magistrate Court which, if granted, would have the same effect of staying proceedings in a criminal matter. Furthermore, the defendant has a duty to perform and its powers to demolish an unauthorised building derives from a statute and it is settled law that a public authority, and the second defendant as such a body, "should not be restrained by interlocutory injunction from exercising its statutory powers unless the plaintiff has shown a real prospect of success in his claim for a permanent injunction at the final hearing (per Edgar Joseph Jr. J in *Saw Seng Kee v. Director of Lands & Mines, Penang & Ors.* [1987] 1 MLJ 80 at page 81).

It is also my finding that although the plaintiff has not expressly prayed in his writ that he is seeking a declaration that he is entitled to an equitable right to remain on that part of the said land, the contents of his statement of claim and affidavit, in the light of the definition of the word "land" as found in the National Land Code, seems to suggest this - he is seeking an order that he is entitled to retain the temple which to my mind, as discussed earlier, is equivalent to seeking for an order that he has a right to retain the said building and consequently an equitable right to remain on that part of the said land. As such, if this application is allowed, the effect of the interlocutory injunction granted would be that the said unauthorised building cannot be demolished and the

plaintiff need not remove the temple to another location; the Magistrate's order to demolish would also be nullified. This, to my mind is what the plaintiff really wanted all along which he never had before without going for trial, i.e., a right for the temple to remain on that part of the said land. In *RCA Sdn. Bhd. v. Pekerja-pekerja RCA Sdn. Bhd. & 15 Ors.* [1991] 1 CLJ 19, at page 22, Harun M. Hashim SCJ said:

> An interim injunction which virtually gives the full relief sought to be secured at the trial is never granted save in exceptional and extremely rare cases.

Having considered the relevant materials before me, and having found no serious question disclosed, I do not think I have to go further to consider the other prerequisites which have to be present before a Court can determine whether an interlocutory injunction should lie. Under the circumstances it is my decision that it would not be a proper exercise of judicial discretion for this Court to restrain the defendants from carrying out the demolition order and that being so, I hereby dismiss this application with costs.